:Scott G-5 (1870's-1909)1910 AP1 Burma
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parties and pleaders in a suit. 14. Fearlessness in deciding cases, or being lion-hearted.

The supreme court in Burma was the Hlutdaw constituted of four wungyis, the chief ministers of state, who held their meetings in a hall within the palace, which took its name from the court. Each wungyi (great burden) had its wundauk (prop of the burden) as an assistant to sit with him in court. These wundauks formed the third rank of ministers, under the four atwinwuns (inner burdens), who were a kind of household ministers, or privy councillors, and sat in a special court, called the Byadeit, also in the palace. The latter had nominally as their chief duty to deal with the monopolies which Thibaw Min set himself to establish in such abundance. But as any man, no matter what special education or preparation he might have had, was considered eligible for any post, political, military, civil, or judicial, so both the Hlut and the Byadeit conducted all manner of business, from the external relations of the country to ordinary criminal or civil appeal cases sent up from the yôndaw, the criminal court, where the myowuns (city burdens), usually two in number, sat daily; or from the tayayôn, the civil court, where two tayathugyis (great men of the law) presided. In either of these inferior courts it was not at all uncommon for a wundauk, or even a wungyi, to attend and investigate important cases. But original suits were also frequently heard before the Hlut, and many cases were decided by the wungyis or any of the subordinate officials in their private houses. Formerly indeed this was the chief source of their salaries, for costs to the amount of ten per cent on the property under dispute went of right to the judge. The late king instituted the custom of fixed salaries, and Thibaw Min retained it, but neglected to pay the money. It will thus be seen that law matters, even in the capital, were carried on in a very casual, haphazard sort of a way. There was no attempt at a distribution of public business into departments, and each individual wungyi took his part in deliberations on all kinds of subjects with as much confidence as if he were an expert.

If the capital displayed a lack of system, there was

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If the capital displayed a lack of system, there was certainly little to be expected from the provinces. The same general system prevailed in the separate districts. Each one was ruled by a governor, or myowun, appointed by the Hlutdaw or by the king, and armed with full powers, military, judicial, civil, and fiscal. Appeals might be sent from his decisions to the Hlut, but otherwise he was entirely irresponsible, as long as he was regular in forwarding the prescribed revenue to the myosa, the prince or princess, or other great personage who "ate" the province. The "town-eater" almost never went to his district, so that it was entirely at the mercy of the myowun, and might be squeezed by him as much as he thought proper and judicious. The subordinate officials varied in different provinces according to their requirements. All, however, had myosayes, secretaries, or town-clerks, nahkandaws, "receivers of the royal orders," and sikkès, chiefs in war, military officers, who formed a provincial council or court holding daily sittings and making reports to the myowun. In some districts, according to the duties, there were in addition to these an akunwun, or revenue superintendent, an akaukwun, or collector of customs, as also in riparian districts a yewun, or myitsinwun, who had a jurisdiction over the entire river. This authority, however, very often vested in one of the governors. Thus the last Wun of Minhla had power of life and death, as high sheriff of the Irrawaddy, from his own town, close on the British frontier, right up to Sagaing, not far below Mandalay. Other officials were the htaunghmu, or jailer, the tagāhmu, governors of the gates, called windawhmu in the capital, where they were very important officers, and the ayatgaung, heads of quarters, in all the larger towns. Under each governor of a province were a number of governors of the separate towns under his jurisdiction. These were called myoôk when the appointment was temporary, or only for life, and myothugyi when it was hereditary, as was most frequently the case. Besides these, in some of the provinces there were taikthugyi, governors of circles or groups of villages, each of which had its own ywathugyi, who in turn had under him sundry gaungs to look after each his specially allotted number of houses. As each of these subordinates had to send in regularly to his

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immediate superior a certain fixed sum, determined without regard to favourable seasons, health of the population, or anything of that kind, and as each man was judge over the people in his charge, it may naturally be supposed that the general population did not lead a very happy life. Complaints might be made against extortion and illegal decisions, but the heads of tracts, if they had the money, could always stifle inquiry.

Some of the laws deduced from Manu's eighteen original enactments strike one as being rather singular. For example, if two men quarrel and fight and one of them is killed, there is no penalty; but if a third party interferes and kills or injures one of the original combatants, he must pay the ordinary fine for murder, or causing hurt. Should he himself be killed, the other two are subject to no penalty. When a man is guilty of adultery with another man's wife, if it be proved to be the first time, he must pay the fine for adultery, usually the price of the woman, assessed according to the judge's opinion; if it is her second offence, he only pays half the fine; but if she has been guilty for a third time, he pays no penalty at all.

If one man curses another and some evil happens, he must pay twice the price of the damage incurred; thus, if the man dies he must pay twice the value of a man; two cows if a cow dies, and so on.

When the king dies there is a general pardon of all offences, and a remission of fines, except in the case of debt. There are also seven things which cannot be reclaimed after the death of the king under whom they were promised or given. These are:—1. Deposits. 2. Pledges. 3. Money paid wrongly by the parties in a law-suit. 4. Things carried off by violence, or seized upon without sufficient title. 5. Promises. 6. Things secretly stolen. 7. Things that have been voluntarily given up by one man and taken possession of by another.

The decisions of Mahawthata, Princess Thudhammasari, and others are of little value from a strictly legal point of view. They are chiefly of a religious character. The princess begins by saying that her cases are to be considered as guides to nobles and judges as to the line they

14: Brant E-5 (1949-50) 1954 AP1 Burma
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Indians

621 consider, because they did not want to lose the Indians as customers for their paddy stalk and as a source of manure for their gardens and fields.

563 The headman of Tadagale, when queried as to the reasons for the departure of the Indians, shrugged his shoulders and said simply that they were afraid, despite the plans for village defense, that their animals might be injured in the event of any fighting between villagers and bandits.

Within a few days, the Indians of Tadagale had all departed; and in the vacant spaces where their houses had stood, the Burmese were eagerly at work erecting buildings of their own.

Social Change

175 631 622 626 Prior to effective British rule in Lower Burma (about 1830), the local autonomous unit was the village circle, consisting of several villages under the authority of a headman. The office of headman seems to have been hereditary in fact, although elections were held. That is to say, headmen tended to be elected in a particular lineage. Rule was through personal relationship between the headman and the villagers. Under the circle headman was a council of elders, appointed by him, one from each village in the circle. Disputes were almost entirely settled by arbitration and compromise, rather than with any concern over the abstract legal right and wrong of the case.

621 Within the village, a system called 'ten-house heads' was operative. This system appears to have been operative through British times, but at least since 1948 has lost effectiveness. Tadagale houses are strung out along a main path, and the ten-house division is such that the houses belonging to one group are mostly contiguous. The head of each ten-house section acted as a kind of deputy to the headman and sat on the council of elders.

175 631 622 With the coming of British rule, much of this changed. They established a hierarchical system, in which there were, in descending order of size, nation, division, district, township, village circle, and village. All officials at each level were appointed from the capital, even down to the village level, where the headman was made an appointed civil servant. He was paid on a percentage basis of his total tax collections and fines levied. The circle headman had police power and judicial authority in petty crimes.

175 692 A judicial system was introduced by the British to replace the old informal arbitration. With an almost total disregard for indigenous institutions and customs, the British established a territorial system based upon law. The loosely structed and informal system of old gradually broke down.

669 631 182 Early in 1948 Burma gained her independence. Since that time the country has been in a state of disorganization. The civil strife has brought about an almost complete breakdown of administrative function on many levels. Certainly the ties of the village with higher units have been curtailed. One indication of this is the fact that the headman no longer submits reports with any degree of regularity to higher echelons, as was required under British rule. Even the local ten-house heads council has largely ceased to function. It exists, but is scarcely used.

25; Ferrars E-5 (ca. 1890) 1901 AP1 Burma
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378. THE PALACE GARDENS.

the cause of suffering and death, and the discredit reflected on officialdom by its methods, lead the best elements of the population to shun office, as a touching of pitch. The dearth of ability and character in the governing classes leaves the governed without efficient protection. The religious motive further operates in withholding information about criminals.

A pregnant category is that of the "five enemies"—Fire, Water, Robbers, Rulers, Ill-wishers. The governors and deputies who acted as judges heard causes at the *yôn*, an open shed in a public place. But every cause was presented in the first instance at the house of the official, and it is contrary to accepted ideas of politeness to approach a superior empty-handed, even on a mere visit of courtesy. The *pros* and *cons* of the case were understood before the regular hearing. At the hearing, the advocates of the parties (*ashé-ne*) publicly presented their pleas and the evidence was recorded. The Burmese form of oath is to take the *kyanza* in the hands, a book of imprecations which the witness invokes on his head if he should speak falsely. The judge or judges intimated their finding to their clerks (*sayé*), who recorded it in official style and read it out. The punishments awarded to criminals and the condition of prisoners were much like those prevailing in Europe at the time of the Renaissance. Every judgment of importance was registered in the *Hluttaw* or chancellery at the capital, presided over by the four chief ministers (*Wundyt*), through whom all royal commands to the governors of provinces issued. There was no regular system of appeals. The Hindu code of Manú served as a body of law, and statutes were decreed by the kings; but *thusan* (custom) supplied standards of a more practical and stable nature.

379. ROYAL MAID OF HONOUR (APYODAWI).

25: Ferrars E-5 (ca. 1890) 1901 AP1 Burma
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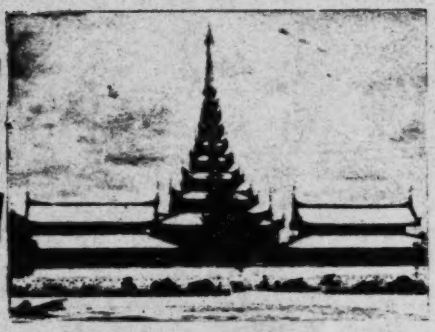

350. PALACE FRONT AND SPIRE.

The British administration preserves the native official machinery, from the *thadyt* to the *myoòk*, augmenting the numbers so as to reach every part of the area and curtailing the powers. Under native *régime* even *thadyts* might be *dâbaing*. The new *régime* takes account of the village *lûdyts* for the sake of their moral influence; many of them have been invested with power to compose differences up to small amounts, and some of the more prominent are honorary magistrates. Independent spirit is on the increase; the officials have to reckon with a new temper in the people. Nevertheless, in municipal councils the supineness and complaisance of the native members are calculated to stultify the position accorded to them. Road-making and sanitation do not arouse their interest, and the local excise, the matter they long to deal with, is excluded from their jurisdiction (*cf.* p. 157). The *thadyt* personally measures the fields, collects the land-tax and poll-tax from house to house, in such a circle as he can make the circuit of twice a year, and receives commission on the amount. He reports on matters within his circle. As many revenue-circles as a native magistrate can personally control are united into a township, under a *myoòk*, who at the same time supervises the co-ordinate grades of police distributed in the township. He publicly tries criminal and civil cases, under his powers as magistrate, by codes of law and procedure accessible to everybody. These codes form the most valuable models of system, in the vernacular, up to the present. By their help both judges and advocates have trained themselves in law. Five to eight townships, according to facilities for

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351. BURMAN PRINCESS.

25: Ferrars E-5 (ca. 1890) 1901 APl Burma
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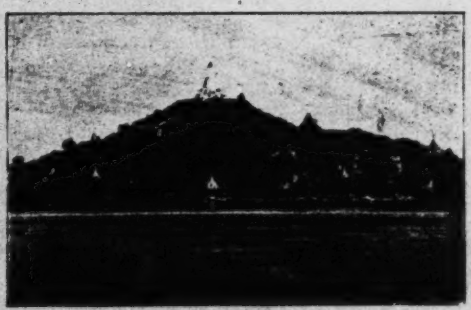
220. ROYAL INSIGNIA.

supervision, are combined into a district under a European magistrate, the Deputy Commissioner, who has a European officer for district superintendent of police, commanding an average force of four hundred native constables. At the district headquarters are a police-depôt, treasury, jail and hospital, besides courthouses and offices. The district officer hears appeals from the *myoôks*, and tries all offences except the gravest and heavy civil suits. This organisation is the backbone of the civil government, the 'Commission.' There are thirty-six such districts, and four hundred native magistrates, on salaries of one hundred to eight hundred rupees a month, besides one hundred and twenty-five native honorary magistrates. The success of this economical administration, organised by Sir Arthur Phayre, in ensuring the safety of life and property and the fulfilment of contracts has given a new value to enterprise and thrift. The British garrison of Burma in 1900 consisted of three thousand European and seven thousand five hundred Indian regular troops.

To return to native Burma—In the centre of the capital, and by euphemism of creation, rises the *pyatthat* which canopies the principal throne in the great hall of audience, where envoys and tributary princes used to be received. Here also the princes of his own blood and the high officers of state paid court to the king on *gaddw-ne*, days when they craved pardon of the king for their shortcomings. The throne (No. 1) is ascended by a stair at the back, leading from the council-room of the king's cabinet of palace ministers, who were the medium of communication with the *Hluttaw*. On such occa-



223. ANCIENT CAPITAL SAGAING.

century, the punishment for abduction of women was enhanced from one of confinement in irons to that of death. Thus what the English lawyer would understand by the term "criminal law" was considered to be the personal concern of the king. Therefore, when the ruling king died, and a new king ascended the throne, all persons undergoing punishment for crimes committed under the previous king, automatically were freed. Criminal jurisdiction therefore was considered to be merely an administrative function of the crown, and it concerned the executive, and not the judicial, officers of the state. Modern European writers have ever emphasized the despotism of Burmese kings, but the Royal Edicts proclaimed at the beginning of each reign clearly showed that the Burmese king was not a blood-thirsty individual devoid of all mercy. In the Edicts, we find the king delegating the function of meting out criminal justice to three of his Chief Ministers, admonishing at the same time that they should temper justice with mercy. The king in the Edicts ordered that even in capital crimes, the punishment should be one of banishment, and the sentence of death was to be reserved for vicious criminals. Even when the sentence of death had been passed, the execution was to be postponed for at least ten days so as to enable the king to consider the case and alter the punishment to one of banishment if the facts justified such alteration.

But as in England, the king was considered to be the fountain of justice, for his was the supreme court of the land. The kingdom was divided into provinces, each under a viceroy. Each province was further divided into cities, each city under a governor. Each city or city area was subdivided into towns and each town or town area into villages, with a headman for each town and each village. The courts of the headmen of towns or villages dealt with suits of small value, and there was a right of appeal from those courts to the courts of the governors of cities. The courts of the governors exercised both original and appellate jurisdiction, and appeals from these courts lay to the court of the viceroy, which also exercised both

30: Maung Htin Aung E-4 (no date) 1953 AP1 Burma
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692 631 original and appellate jurisdiction. These officers were executive officers under the crown, but when they sat as judges in their respective courts, they were judges in the full sense of the term, for they were free of all executive control. Finally there [643] was the Supreme Court. This final court of appeal consisted of the king as the president, the crown prince as the vice-president, the four chief ministers, and their four deputies. The king, however, attended only on rare occasions, and thus the crown prince usually presided over the court. The law that these courts administered and interpreted was the customary 694 law of the Burmese people. One special feature of the courts [693] was their attempt to settle the case before actually trying it. Lawyers, who were attached to the courts as officers, although their fees were payable by the litigants, also endeavored to conciliate the contending parties. Often the parties decided to refer their suit to an arbitrator. There was no right of appeal from the decision of an arbitrator, on the ground that the arbitrator was chosen by the contending parties themselves. When a suit had been heard and decided, the successful party offered a dish of pickled tea to the other party, and if the latter accepted, the parties were deemed to have been reconciled, and there could be no appeal from the decision of the court. The refusal of the unsuccessful party to accept the offered dish of pickled tea served as his notice of appeal.

671 [178] 177 175 Burmese history, like the history of many countries, records rebellions, invasions, and violent struggles for power, but the development of Burmese customary law has been singularly free from catastrophes and sudden changes. There has never been a revolution in the Burmese customary law. However, the law in the course of its long history experienced three great impacts with the outside world. The first was the impact of Hindu jurisprudence, second was the impact of Buddhism, and the third was the impact of English law as the result of the British conquest of the country towards the end of the nineteenth century.

Some of my colleagues of this conference have already